

**BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
NOVEMBER 5, 2008**

**CALL TO ORDER** A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Craig Wagner, Gina Klempel, Scott Hollinger and Mark Hash. Tony Sagami was absent. Jeff Harris, Andrew Hagemeyer, and Alex Hogle represented the Flathead County Planning & Zoning Office.

There were approximately 3 people in the audience.

**APPROVAL OF MINUTES** Wagner made a motion to approve the October 7, 2008 meeting minutes as written.

The motion carried by quorum.

**PUBLIC COMMENT**  
*(not related to agenda items)* None.

**PUBLIC REVIEW** Hollinger reviewed the public hearing process.

**CALAWAY/WHITAKER CONDITION CHANGES (FCU 08-02)** A request by Robert Smith of A2Z Engineering, on behalf of Tim & Sherry Calaway and Richard & Nancy Whitaker, to amend an existing Conditional Use Permit that allowed for a low impact recreational facility (tennis/gymnastics/community center) within the Bigfork SAG-5 (Suburban Agricultural) Zoning District.

**STAFF REPORT** Alex Hogle reviewed the changes requested by the applicant to Staff Report FCU 08-02 for the Board.

**BOARD QUESTIONS** Hollinger asked if the sewer line extends north of Highway 83.

Hogle said it currently does but only adjacent to Highway 35.

Hollinger asked how far up Highway 35 it goes.

Wagner said to Coverdell Road, by the catholic church.

Hollinger asked if Grizzly Jack's is hooked in.

Klempel asked if Crossroads Church is hooked up.

Wagner said yes and said Dale McMurren plans on hooking up also.

Hogle pointed out a map that shows where the water and sewer lines terminate.

Sagami asked about the late-comers agreement.

Harris explained.

Hogle told the board there's information in their packets about the late-comers agreement. He talked about the North Sewer Main Extension, the people involved, and the fees to hook in.

Wagner asked if a DEQ waiver letter has been issued.

Hogle said no, he hasn't received anything. He talked to Emily Gillespie at DEQ who said the applicants have adequate land to where a system could be built and a waiver could probably be obtained. He said the DEQ does not look at the implications to establish growth plans or the overall relationship of how one particular property would affect the future development of neighboring properties. One reason he thinks it's appropriate for the applicants to connect is because he anticipates additional uses at this facility that may necessitate more water and said it would be hard to accommodate on a septic system.

## **APPLICANT PRESENTATION**

Dennis Sabo, 15 Starview Drive, talked about the intent of the proposed project. He discussed the costs involved to hook into Bigfork Water & Sewer. He talked about setting up the community center as a non-profit organization so they could make it available to the Bigfork community. He suggested some changes to the conditions.

Sagami said Bigfork Water & Sewer's cost states \$65,000 and Sabo said \$400,000 plus. He wondered why the difference in cost.

Sabo said his property is a 10-acre lot; he has a purchase agreement with Calaway for 5 acres of it. He talked about the costs of hooking in and said it depends on lot size.

Sagami said there's still a big difference in the numbers.

Sabo said the sewer construction cost would be \$90,000.

Hollinger talked about the cost of doing a septic system versus hooking in to Bigfork Water & Sewer. He said if the cost of hooking in is more than 3 times greater than the cost of the septic they don't have to do it.

Rob Smith, of A2Z Engineering, talked about hooking into Bigfork Water & Sewer versus doing their own system and gave a cost analysis of several options.

Sagami said 5-acres would have a \$65,000 late-comer fee which would reduce the cost to around \$350,000 total. That's still almost triple the cost of doing their own system.

Klempel asked if the church gave the applicants a reason why they couldn't hook in.

Sabo said they're doing a 10-year building plan and they don't want their facility to be messed with.

**PUBLIC  
COMMENT**

None.

**BOARD  
DISCUSSION**

Hash asked if this request was advertised.

Harris said legal notice is usually done at least 15 days prior to the meeting but this is not a public hearing so it was only listed on the website.

Hash doesn't recall doing a change of this nature and said it could be a significant change and the public isn't being noticed. He was surprised the board has jurisdiction to make changes.

Hogle said the adjoining landowners were notified on October 9, 2008 and legal notice was posted in the Daily Inter Lake on October 19, 2008.

Sagami asked about it going back to the Bigfork Land Use Advisory Committee (*BLUAC*).

Hogle said it was discussed and was determined that it didn't need to go back.

Sagami asked Wagner if he thinks it should have went back before BLUAC.

Wagner said no. He pointed out that staff and Bigfork Water & Sewer don't support not hooking up. He said this issue rests on a waiver from DEQ one way or the other.

Hollinger said that Bigfork Water & Sewer won't provide a "will not serve" letter. He talked about creating an economic balance for the project. He said growth north of Bigfork is pretty slow and what is projected in 20 years, will probably take 40 at the current rate. He thinks putting in a 20-year capacity extension in this area is beyond the scope.

Klempel said if people knew ahead of time what they wanted to do with their property they probably would have all chipped in and been ready to hook up.

Hash wanted to know staff's thoughts on things Hollinger pointed out. He shares some of the same concerns as staff.

Hogle pointed out that some property owners already paid-in to put the extension in the area because of real needs, not only for new uses, but because there is a history of failed septic systems in that area. None of the uses in that area are really of a public nature; most are private businesses. The costs are big up front, especially for one person to bear, but in the long run it's not much for something that would serve as a community "nerve center." He's also heard this project referred to as the Saddlehorn Club and he doesn't understand the nexus but said there is growth in the Bigfork area that seems to be lined up to use this facility.

Hollinger said he was talking about adding 1200-ft into a new area and thinks it's going to be a long time before it's needed out there.

Harris said the appropriateness of allowing facilities to go that far out, which was discussed in the staff report, throws a certain responsibility on the applicant. He said there was an understanding, based on the conditions, that they were to work with the Bigfork Water & Sewer district for this facility. He said the Bigfork Water & Sewer has a program which encourages line expansion and somewhat "pioneering" lines based on a good faith promise of some reimbursement as people hook-in. He said this area is part of their district now and he feels it's an area appropriate for water and sewer.

Hash asked if Harris meant "pioneering" to mean putting in their own system.

Harris said no; he meant extending the lines. He said if you put in your own system, sometime down the road there will be a "hole" in district service. He said that's difficult for a utility company to deal with.

Sagami talked about the property someday being rezoned and said it would be reasonable to hook up at that time.

Harris said once lines are in, property value go up.

Hogle mentioned the proposed access and said the applicants are requesting to change that as well. He continued to talk about the proposed facility and thinks it could be a model for the area; he doesn't see it as a charity case. He said Bigfork Water & Sewer recommended that if this isn't the right location for this project, they could probably find another location in the district that could be served by water and

sewer without the high cost of connecting to the Highway 35 extension.

Hollinger said he's watched this project try and do what Hogle just described for a number of years. He said Bigfork is a land-locked area between water and steep hills with conservation easements to the east and said they're "hemmed in".

Hogle reiterated that the recommendation came from Bigfork Water and Sewer.

Sagami asked if Hogle was trying to make the point that by reducing the road cost, the savings could be passed on to the sewer hookup.

Hogle said by allowing them to only have a single road, and not go through the efforts to develop a compliant access onto Swan Way, goes to a certain degree to assist in the financial burden of this development. He said with a road like that being developed, it opens up adjacent lands for future development in an effective manner. He thinks it's pretty logical to envision the overall development.

Sagami mentioned disagreeing with part of the staff report and how to go about making a motion.

Hollinger said accepting the staff report is not approving it.

Harris said the board could take it in one motion or two.

## **MOTION**

Sagami made a motion adopt staff report FCU 08-02 and issue the conditional use permit with the following changes; to omit conditions 3, 6, and 7 and change the word *and* to *or* in condition 10.

*This motion was withdrawn (see below).*

## **BOARD DISCUSSION**

Hash asked if Sagami's motion meant he was in opposition to staff's recommendation regarding the water.

Sagami said that's correct.

Hash said to be technical, Sagami would have to make his own findings-of-fact.

Hollinger said Sagami could adopt the summary of the findings-of-fact with his changes.

Hash said Sagami's motion doesn't support staff's findings-of-fact.

*Sagami withdrew his motion.*

Wagner asked about making a motion to not accept the sewer. He said you could make two separate motions because it's two separate subjects.

Hollinger asked for staff's suggestion.

Harris said the board should handle them separately as to not confuse the issue.

Hollinger thinks what Sagami meant to amend was the conditions; he said the board can accept findings whether they agree with them or not.

Hash said staff's findings on sewer and water support their conclusion. Sagami would need to come up with separate findings to support his conclusion. He suggested how to craft the motion.

**MOTION**

Sagami made a motion seconded by Klempel to adopt the findings-of-fact and to omit conditions 3, 6, and 7.

**ROLL CALL**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Hogle pointed out a few things from his staff analysis and said his "reasoning's of planning staff" should have been called "findings". He said if the board finds some they don't agree with they can alter language or delete them entirely.

Hash mentioned some concerns even though it's a great project. He said the board would have to adjust staff's reasoning's that would support the board's opinion as to why it's ok to ignore the reasoning's. He said it's difficult and that's probably one of the reasons he wouldn't vote for it.

Sagami talked about adopting the findings but adding something about a DEQ waiver being sufficient.

**MOTION**

Sagami made a motion seconded by Wagner to amend Staff Report FCU-08-02 by adding a new finding-of-fact to state: *A DEQ waiver would be sufficient enough to overcome the stated concerns as bullet-pointed in the report*, and by amending original Condition #10 (new Condition #7) by replacing "and" with "or".

**ROLL CALL**

On a roll call vote the motion passed 4-1 with Hash dissenting.

**HAUCK  
(FZV 08-05)**

A request by Berg Custom Homes & Design Inc., for a Zoning Variance to property within the Little Bitterroot Lake Zoning District. The applicants are requesting a variance to Section 3.33.050 (6) of the Flathead County Zoning Regulations which requires a 50' setback from the lake.

<b>STAFF REPORT</b>	Jeff Harris reviewed Staff Report FZV 08-05 for the Board.
<b>BOARD QUESTIONS</b>	<p>Sagami asked if 32-ft is the existing deck.</p> <p>Harris said yes.</p>
<b>APPLICANT PRESENTATION</b>	Ed Berg, of Berg Custom Homes, said he didn't really have anything to add other than he was the applicant for a home next door about eight years ago. He said it's currently about 32-ft from the high-water mark to the deck. They're going from a 12-ft deck to an 8-ft but they are shifting back to save some existing mature trees.
<b>PUBLIC COMMENT</b>	None.
<b>BOARD DISCUSSION</b>	<p>Hollinger said the zoning out there was written for status quo and replacement. He would like it to stay that way as opposed to an incremental deduction and doesn't want to see a precedent established. He would like to see consistency and for it to reflect what the zoning out there is; not chisel away at it.</p> <p>Harris said anytime you can become more conforming is the intent of the regulations.</p>
<b>MAIN MOTION</b>	Wagner made a motion seconded by Sagami to adopt staff report FZV 08-05 as finding-of-fact and approve the request for a variance to section 3.33.050(6) FCZR with the conditions listed on page 6 of the staff report.
<b>BOARD DISCUSSION</b>	<p>Klempel said there needs to be the correction to 35 feet from 32.</p> <p>Harris said staff is recommending a 2-ft reduction on the deck so it becomes more conforming. Rather than 32 feet from the high-water mark, it would be 35 feet.</p> <p>Hollinger said Harris was talking about being more conforming with the setback and he was talking about more conforming to what the zoning says for replacing a structure.</p> <p>The board and staff recognized they were talking about two different things but had the same meaning.</p> <p>Harris said staff understands that the footprint of the building should go in the footprint of the building but there's an opportunity for the deck to become a little more conforming with no expense because the applicant is going to do it anyway. This shows that the board is granting variances moving towards the goal of being more conforming.</p>

Hollinger said he was talking about conforming to the existing permissions.

Berg said no part of the foundation structure can be closer than 43 feet. If you take 8 feet off that, you're at 35 which is what the deck is.

Hash talked about setting precedence and said board may want to look at the future instead of individual applications sometimes. The board needs to look at what the purpose of the board is in regard to making decisions.

**ROLL CALL**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS**

Wagner asked about what happened to the "reconsider motion" for Shagagi.

Harris said Shagagi will be coming up in December along with three other items. He said staff offered to sit down with the applicant and the neighbors but wasn't sure about the status.

Hollinger asked if there's any follow-up in regard to Shagagi's application.

Harris said staff will let Shagagi know when he's coming back before the board. He said staff offered to be part of a discussion but can't force the issue.

**NEW BUSINESS**

Harris reviewed the items that would be seen by the board in December.

Wagner researched the proper way to do reconsider motions and briefed the board on his findings.

**ADJOURNMENT**

The meeting was adjourned at 7:35 p.m. on a motion by Wagner seconded by Klempel.

The next meeting will be held at 6:00 p.m. on December 2, 2008.

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Scott Hollinger, President

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Jill Goodnough, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 12/2/08